

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:040. Renewal and reinstatement.

RELATES TO: KRS 309.357(1)(a)~~[(3), (4), (5), (6)]~~, 309.361, 309.362

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and authorizes licensure renewal. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(1)(a) requires the board to establish a schedule of fees for the renewal of licenses, the reinstatement of licenses, and establishes requirements for placing licenses in inactive status and for restoring licensing to active status.~~[(3) requires all licenses to be renewed.]~~ KRS 309.361(1) designates a two (2) year renewal period. This administrative regulation establishes the requirements for renewal of licenses and the reinstatement of expired licenses that have been expired for less than five (5) years' time.

Section 1. (1) A license to practice massage therapy shall be renewed upon:

(a) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2), on or before the anniversary date of issue of license;

(b) Submission to the board of a completed~~[the]~~ Application for Renewal form and the following written information:

1. Current complete home address, email address~~[to receive communications from the board]~~, and telephone number, to receive communications from the board;

2. Current complete name, address, and telephone number of each location in which massage therapy service is provided by the licensee;

3. A list indicating completion of the continuing education hours~~[units taken during the licensure renewal period]~~ as required by 201 KAR 42:110. The list shall:

a. Itemize the number of clock hours credited for each course; and

b. Designate the courses that fulfill the three (3) required hours of ethics training; and

4. Confirmation that, since the license was issued or renewed, the licensee has not:

a. Been convicted of a felony; or

b. Had his or her license disciplined and is not currently under disciplinary review in another state;~~;~~ or

c. ~~Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to KRS 164.772;~~ and

(c) Submission of a two (2) inch by two (2) inch or larger passport quality color head shot photograph of only the applicant to the board affixed to the Application for Renewal form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.

(2)(a) A licensee who has been convicted of a crime or who has been disciplined or is currently under disciplinary investigation or review by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal may be required to~~[shall]~~ participate in an in-person interview with the board's Application Committee prior to renewal of the license. The purpose of this interview~~[with the board's application committee]~~ shall be to find if the licensee [met]~~[meets]~~ the requirement of good moral character established in KRS 309.358(1)(c)~~[(3) and 335B.040]~~. The interview shall be conducted pursuant

to the board's authority under KRS 309.355(2)(3), 309.362(1)(b), and 309.362(2)(4), and in accordance with KRS 335B.010 to 335B.070.

(b) Each applicant for renewal who has been convicted of a crime or who has been disciplined by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall submit a recent fingerprint supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date the Application for Renewal is submitted.

(3) ~~If[, upon a preliminary review,] the board[determines that] denies an Application for Renewal[shall be denied], notice[of the preliminary decision] shall be sent to the licensee and the licensee shall have thirty (30) days from the date of the notice[letter] to request an Administrative Hearing in accordance with KRS Chapter 13B by filing a written request for an appeal [a hearing in writing by certified mail] with the board. [If a request for hearing by the licensee is not received by the board within thirty (30) days of the letter, the licensee shall be found to have voluntarily withdrawn his or her Application for Renewal.]~~

(4) A revoked license shall not be renewed.

Section 2. A licensee convicted of a felony or disciplined by the board of another jurisdiction~~[in the interim period between issuance and renewal of the license, or between renewal periods]~~, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of the issuance of the license, the license shall expire and the person shall not practice nor represent himself or herself as a massage therapist in Kentucky.

Section 4. (1) An expired license shall be renewed within ninety (90) days of expiration if the applicant submits:

(a) A completed Application for Renewal form;

(b) Documentation of successful completion of twelve (12)~~[twenty-four (24)]~~ hours of continuing professional education, which:

1. Includes studies in ethics, business practices, science, and techniques related to massage therapy;

2. Have been credited within two (2) years prior to the renewal deadline; and

3. Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(c) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2), (5), or (6).

(2) If ninety-one (91) days or more, but less than five (5) years, have elapsed since the license expiration, the licensee shall file an Application for Reinstatement.~~[(a) A written request for an extension of time to file a completed Application for Renewal form shall be submitted to the board no later than ninety (90) days after the expiration of the license.~~

~~(b) An applicant submitting an Application for Renewal form later than ninety (90) days after the expiration date shall attach a written explanation for the late filing to the form. An Application for Renewal submitted later than ninety (90) days without a written explanation for the late filing shall be considered incomplete.~~

~~(c) The board shall permit late renewal beyond ninety (90) days after the expiration of the license for an applicant submitting documented proof of a medical disability or illness, or active military service that precluded the timely submission of an Application for Renewal form.~~

~~(d) The board shall not waive the late renewal fee required by KRS 309.357(6)(a).]~~

Section 5. (1) ~~[Upon initial licensing,]~~ A licensee shall at all times display a copy of the licensee's current license~~[be furnished a wall] certificate [which shall be displayed at all times]~~ at the primary massage therapy service location. A digital copy of the licensee's certificate shall be provided to the licensee upon initial licensing and renewal and available for download by the licensee.

(2) A licensee shall provide verification of current licensure upon request if he or she is currently engaged in the practice of massage therapy, intends to engage within a reasonable time in the practice of massage therapy, or has engaged in the practice of massage therapy immediately prior to the request.

(3) Official verification of licensure status shall be available on the board's Web site at <http://bmt.ky.gov>.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee ~~[requesting to return]~~seeking restoration to active status shall:

1. Provide proof to the board of completion of~~[continuing education required by KRS 309.362(3)]~~ one (1) hour of continuing professional education for every six (6) months the license has been in an inactive state, not to exceed five (5) years, in accordance with 309.357(3). If an applicant obtained inactive status within ninety (90) days of a biennial renewal date, the applicant shall also provide proof of the twelve (12) required CE hours for renewal and pay the renewal fee.~~[At least three (3) of the continuing education hours submitted shall be focused on the area of ethics];~~

2. Complete the Application for Inactive Status, Renewal of Inactive Status, or Return to Active Status, as required by 201 KAR 42:020, Section 2(8); and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be counted toward continuing education requirements~~[used]~~ for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply as required by KRS 309.357(1)(d)~~[362(3)]~~.

Section 7. (1) A former licensee whose license has been expired for less than five (5) years shall apply for reinstatement of the license by:

(a) Submitting a completed "Application for Reinstatement";

(b) Submitting proof of completion of a total of credit hours of continuing professional education determined at the rate of one-half (1/2) credit hour for each month having passed since the license expired; and

(c) Paying the applicable fee set forth in 201 KAR 42:020 Section 2(3).

(2) Continuing professional education credit hours completed by an applicant for reinstatement:

(a) May have been obtained by the applicant at any time after the license expired, but must have been obtained prior to submitting the Application for Reinstatement; and

(b) Must meet the requirements for board-approved continuing education courses set forth at 201 KAR 42:110 Section 3.

(3) A license shall not be reinstated if more than five (5) years have passed since the license expired pursuant to Section 3. A person may apply for and obtain a new license by meeting the current requirements for licensure.

(4)(a) Each applicant for reinstatement who has been convicted of a crime since the license expired shall submit a fingerprint supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The background check shall be applied for within the ninety (90) days preceding the date the Application for Reinstatement is submitted.

(b) If an applicant for reinstatement has been convicted of a crime or has been disciplined or is currently under disciplinary investigation or review by the board of another jurisdiction, the applicant shall include a written explanation of the charges and proof of dispositions with the application, and the board may require the applicant to participate in an in-person interview with the board's Application Committee prior to reinstatement of the license. The purpose of this interview shall be to find if the licensee meets the requirement of good moral character established in KRS 309.358(1)(c). The interview shall be conducted pursuant to the board's authority under KRS 309.355(2), 309.362(1)(b), and 309.362(2), and in accordance with KRS 335B.010 to 335B.070.

(5) If the board denies an Application for Reinstatement, notice of the decision shall be sent to the applicant for reinstatement and the applicant shall have thirty (30) days from the date of the notice to request an Administrative Hearing in accordance with KRS Chapter 13B by filing a written request for an appeal with the board.

(6) A revoked license shall not be reinstated.

Section 8.[Section 7.] Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Renewal", June 2021; and

(b) "Application for Reinstatement", June 2021[October 2016, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601[Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602], Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>
Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 858 3451 1709
Password: 270127
SIP: 85834511709@zoomcrc.com
Password: 270127

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensure renewal and reinstatement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify potential licensees of the requirements for licensure renewal and reinstatement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements for licensure renewal and reinstatement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board and anyone interested in reinstating their license.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the requirements for licensure renewal and reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the requirements for licensure renewal and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist licensees and prospective licensees in understanding the process to renew and reinstatement a license.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None. It only simplifies and clarifies the requirements for licensure renewal and reinstatement.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Massage Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: